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May 5, 1997

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

RECEIVED

MAY 5 1997

Federal Communications Commission
Office of Secretary

Re: **EX PARTE**
CC Docket No. 96-128

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("Commission") rules, 47 C.F.R. § 1.1206, I hereby notify you that representatives of Citizens United for Rehabilitation of Errants ("C.U.R.E."), Charles Sullivan, Jean Albright, Christopher Holt of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., and the undersigned, met on May 2, 1997 with Mary Beth Richards, Adrien R. Auger and Kathleen Franco of the Common Carrier Bureau.

During the meeting, the parties discussed comments filed in the captioned proceeding and provided the staff with copies of the attached Review of the (Virginia) Department of Corrections Inmate Telephone System.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and two copies of this letter are being submitted to the Office of the Secretary for inclusions in the public record. Please direct any questions or concerns to the undersigned.

Sincerely,



Cheryl A. Tritt
Counsel for Citizens United for
Rehabilitation of Errants ("C.U.R.E.")

cc: Mary Beth Richards
Adrien R. Auger
Kathleen Franco

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**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

**Review of the
Department of
Corrections' Inmate
Telephone System**

**REPORT OF THE
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION**

**REVIEW OF THE
DEPARTMENT OF CORRECTIONS'
INMATE TELEPHONE SYSTEM**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 70

**COMMONWEALTH OF VIRGINIA
RICHMOND
1997**

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Director

Philip A. Leone

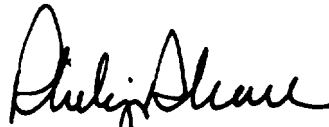
Preface

Item 14I of the 1996 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to examine a number of different issues related to the Department of Corrections' (DOC) inmate telephone system. These issues include a comparison of policies in other states, the financial impact on inmate families, and the need for oversight by an entity independent of DOC. This report presents the staff findings and recommendations regarding these and other issues related to DOC's inmate telephone system.

This study found that the fiscal impact on recipients of long distance calls completed through the inmate phone system could be reduced by making the rates charged comparable to those the public pays for similar calls. Even with reduced rates, however, the State could continue to receive revenue from the inmate phone system. All of the southeastern states contacted for this review, and many of the states nationwide, receive some form of revenue from their inmate telephone systems. By making the rates charged for the inmate system comparable to those the public pays for similar calls, any revenue the State received would not be from charges in excess of standard collect call rates.

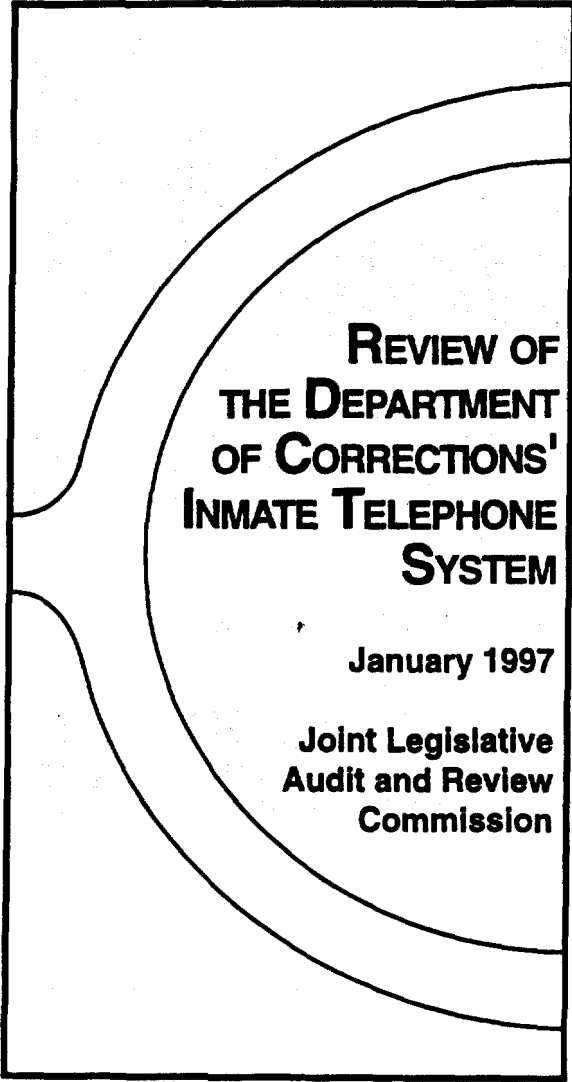
To address shortcomings regarding administration and oversight of the system by DOC, responsibility for the system should be transferred to the Department of Information Technology (DIT). DIT has the necessary infrastructure to best support more proactive and consistent administration of the inmate telephone system. Finally, additional options designed to improve aspects of the inmate phone system, such as requiring an independent audit and advance notification of rate changes, should be considered.

On behalf of JLARC staff, I would like to thank the staff of the Department of Corrections, the State Corporation Commission, the Department of Information Technology, and MCI Telecommunications Corporation who assisted in our review.


Philip A. Leone
Director

January 29, 1997

JLARC Report Summary



REVIEW OF THE DEPARTMENT OF CORRECTIONS' INMATE TELEPHONE SYSTEM

January 1997

Joint Legislative
Audit and Review
Commission

Providing inmates access to telephones may result in a number of positive benefits, according to some corrections officials. As a result, telephones have routinely been available to inmates in Department of Corrections (DOC) facilities since the early 1970s. However, problems with the early systems mitigated some of the potential benefits. There was no telephone system uniformity statewide, DOC's role in the op-

eration of the system was staff intensive, and there were few proactive security features available. These shortcomings, in part, led to the 1991 acquisition by DOC of the current inmate phone system, operated by MCI Telecommunications Corporation (MCI).

The current inmate phone system successfully addresses many of the shortcomings of the previous methods used to provide phone service to inmates. DOC's involvement in the administration of the inmate phone system has been significantly reduced. Inmates' access to telephone service is reportedly more uniform across the DOC system. Moreover, the current inmate phone system has security features designed to proactively reduce fraudulent activities conducted by inmates over the telephone as well as to enhance the operation and security of DOC's institutions. Finally, MCI is also required to provide the State with a portion of the billable revenue generated by inmate calls.

Item 14I of the 1996 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to examine a number of different issues related to the DOC inmate phone system. These issues include a comparison of policies in other states regarding inmate phone systems, the financial impact on inmate families, and the need for oversight by an entity independent of DOC.

While the current DOC inmate phone system has many beneficial features over the previous methods for providing inmate phone services, there are several issues which should be addressed to improve the existing system. Significant findings of this report include:

- Steps to reduce the fiscal impact on recipients of long distance collect calls from the inmate phone system should be taken. The fiscal impact on DOC inmate call recipients has been increasing steadily each year since FY 1992 and could mitigate any benefits attributed to the inmate phone system. Although a number of non-rate factors such as growth in the DOC system's inmate population have contributed to the increasing fiscal impact, the higher rates and long distance surcharges have also increased the fiscal impact on call recipients.
- If the fiscal impact on call recipients is reduced, any revenue the State could receive from the system should be retained. Many states receive commission revenue from their inmate phone systems. However, as in other states, the commission revenue should be used to provide or enhance programs or services that benefit DOC inmates.
- To improve administration and monitoring, responsibility for developing, administering, and monitoring the DOC inmate phone system should be assigned to the Department of Information Technology (DIT). DIT has the necessary infrastructure and resources available to address issues related to telecommunications services and is currently responsible for the acquisition and provision of these services for the State.
- To further improve the inmate phone system and provide for more proactive administration, DOC should require the submission of more detailed inmate phone system data, require an independent audit of the system's

operations, and implement mechanisms intended to benefit inmate call recipients.

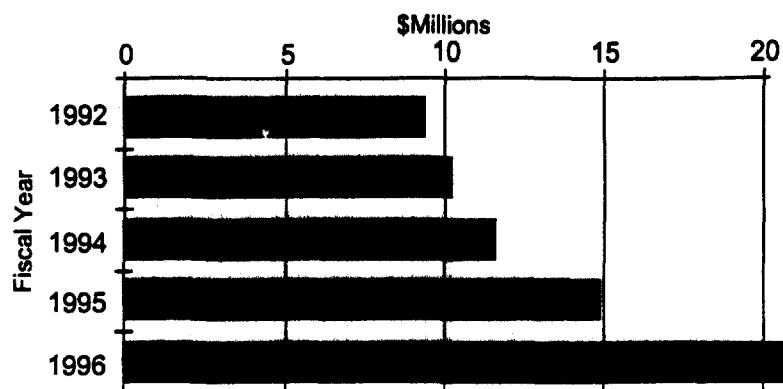
Steps to Reduce the Fiscal Impact on Inmate Call Recipients Should Be Taken

All calls from inmates in DOC facilities are completed as collect calls. As a result, the fiscal impact of receiving inmate calls is placed directly, although voluntarily, on the call recipient and not the inmate. This review indicates that the total billable charges to call recipients have increased significantly since FY 1992. A number of factors have contributed to this increase. Inmates are making more calls that last longer, and the total inmate population has increased since FY 1992. In addition, the increases in the rates charged, primarily the long distance surcharge, have also impacted the total billable charges.

A number of unintended consequences of the increasing billable charges of the phone system could occur. First, call recipients noted that the increasing costs associated with using the system may require them to reduce the number of calls they can accept from inmates, potentially mitigating any benefits that accrue through telephone contact. Second, the impact on call recipients varies by DOC facility. Inmates in DOC facilities located in more remote areas of the State place calls that cost more than calls placed by inmates in facilities located in the central region of the State. As a result, facilities that may be the most difficult to visit due to the distance from home are also the most costly from which to receive calls.

Therefore, steps should be taken to limit the fiscal impact of the telephone system on recipients of calls from DOC inmates. Individuals receiving collect calls appear to have an expectation that rates and charges will be similar to those levied on collect calls completed outside of the inmate

Inmate Telephone System Total Billable Charges Fiscal Years 1992-1996



phone system. Linking charges for calls made through the DOC inmate phone system to charges the public pays for collect calls would reduce the total fiscal impact on call recipients. Nonetheless, call recipients will need to exercise some personal responsibility to limit the number of calls accepted in order to reduce the fiscal impact of inmate calls.

Commission Revenue Could Be Retained and Utilized for Inmate Programs

Commission payments are used by telephone companies in part to secure the right to be the exclusive provider of inmate telephone services to state correctional systems. Reflective of this practice, many of the correctional systems in the United States receive some form of revenue from their inmate phone systems. However, unlike many other states, Virginia has not specified that any portion of commission revenue be used to enhance inmate programs or services. To identify the potential uses for any revenue from the inmate phone system, DOC should develop a proposal for utilizing the revenue and include measurable goals and objectives for enhancing inmate pro-

grams or services.

Commission Payments for State Telephone Systems Are Common. For this review, the study team interviewed corrections officials in a number of southeastern states regarding their inmate phone systems. These states all reported receiving commission payments from the companies that provide inmate phone services. In addition, other studies also indicate that prison inmate telephone system commission payments are common throughout the country. For instance, a 1995 study of state corrections departments in the United States reported that 38 of 41 respondents received commission payments from their inmate phone system.

Utilization of Inmate Telephone Revenue. The majority of the states contacted by JLARC staff indicated that either all or a portion of inmate telephone commission revenue is returned to the state corrections department or designated for specific inmate welfare programs. For example, in Arkansas, the revenue is to be used for the benefit of inmates and has been used to buy recreational equipment. In Kentucky, where the revenue is allocated entirely to the state corrections' department, the revenue is used

by the department to offset the cost of providing health care to inmates. Moreover, corrections officials in other states have indicated that revenue from inmate telephone commissions has assisted them in providing programs which previously lacked adequate general fund appropriations.

DOC Inmate Programs Could Benefit from Commission Revenues. Although DOC inmate telephone system revenue is not specifically used for inmate purposes at this time, DOC staff indicated that there are inmate programs that could benefit from the revenue. Potential areas identified include inmate treatment programs, academic and vocational education programs, and the expansion of telemedicine videoconferencing between hospitals and DOC facilities. In order to prioritize programs' needs for this funding, DOC should develop a proposal for using the inmate telephone revenue to fund specific programs. The proposal should include goals and objectives for programs that are requested to receive the funding.

Administration of Inmate Phone System Contract Could Be Transferred

The mandate for this study also required JLARC to review the need for oversight of the inmate phone system. The principal framework in which the inmate phone system operates is the contract. Therefore, a properly written and proactively administered contract is necessary to ensure that the needs and expectations of DOC, inmates, and call recipients are met. Nonetheless, concerns with the adequacy of the oversight and monitoring provided the inmate phone system have been identified.

In addition, a 1992 study by the State Crime Commission also cited concerns with DOC's oversight and monitoring of the system.

Moreover, the telecommunications industry is a rapidly evolving and technology-driven industry. Significant changes have occurred over the last decade in the industry and more will continue to occur. DIT appears to be the agency with the proper focus and infrastructure to best support more proactive and consistent administration of the inmate phone system in this rapidly changing environment. DIT also appears to be better suited to keeping pace with rapid changes in the telecommunications industry. Finally, including the inmate phone system as part of the next statewide telecommunication contract could also be beneficial in the negotiation process for the provision of the State's telecommunication services.

Additional Options for Improving the Inmate Phone System

In order to enhance the ability of the contracting agency to administer the inmate phone system, the next contract should require the submission of more detailed data related to the system's operation. The data should also be submitted in an automated format for easier analysis and auditing. Moreover, the next contract should require that an independent audit of the phone system's timing, billing, and billable and commission revenue be provided. Finally, additional mechanisms designed to benefit call recipients — such as notification of rate increases and input into the design of the next system — should be implemented.

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Role of Inmate Telephones

For various reasons, inmate telephone use has generally been viewed positively by prison officials. Telephones reportedly enable inmates to maintain active family and community ties which assist in their adjustment to prison. In addition, some individuals also suggest that these ties assist inmates in their positive adjustment once released from custody. However, despite these potential benefits, the frequency with which inmates are allowed telephone access varies from state to state.

Telephone Access and Ongoing Community Ties. A number of corrections officials and inmate advocates contend that it is important for incarcerated persons to maintain ties with family members and members of their communities. For example, the Federal Bureau of Prisons identifies inmate telephone access as a "means of maintaining community and family ties that will contribute to an inmate's personal development." In addition, inmate telephone access has been identified as a mechanism for enhancing morale among inmates and maintaining order and security in prison facilities. The possibility of losing certain telephone privileges due to unacceptable behavior could be used as a factor in maintaining order and discipline among inmates.

Generally, incarcerated persons are afforded additional means of maintaining ties with family and community members. In the Commonwealth, prison inmates can also remain in contact with family and community members through written communications and prison visitations. However, of the various forms of communication available to prison inmates, telephone access tends to be more convenient than visitation and more direct than written communications. As a result, prison inmates and their families have apparently come to rely on telephone communication as a primary means of maintaining ties.

Philosophies of Inmate Telephone Access Vary. Telephone access by prison inmates is governed largely by the philosophy of the prison system's administrator or governing body. There is no universal standard or case law which determines the minimum or maximum number of calls or minutes an inmate is granted for telephone use. Therefore, inmate telephone use policies differ from state to state.

Inmate telephone use in general has been viewed as a privilege granted by correctional authorities rather than a right. For example, the Federal Bureau of Prisons has established that prison inmate telephone calls are a privilege and not a right. DOC staff also indicated that telephone use is a privilege granted to inmates and not a right that inmates must receive.

While most inmates in Virginia's correctional institutions have relatively free and unlimited access to telephones, this is not the case throughout the country. For example, inmates in North Carolina's medium and maximum security institutions are permitted two ten-minute collect calls each month. Additionally, in Texas, despite attempts by the legislature to allow more access to phones by inmates, state prisoners are granted only one five-minute collect call every three months. Moreover, being allowed to make that one call is reportedly contingent upon the inmate's behavior.

History of Telephones in Virginia Prisons

Early inmate telephone systems had a number of shortcomings. These shortcomings, which primarily involved system uniformity and security, required DOC to invest significant staff resources in addressing issues related to inmate telephone abuse. In addition, DOC staff were also directly involved in the ongoing administration of inmate telephone services.

Early System Was Not Unified. DOC staff reported that prison inmate telephone services were first offered in Virginia during the 1970s. When the decision was made to make phones available to inmates, inmate telephone services in DOC facilities were offered through local telephone companies which provided operator-assisted collect calls. Through these arrangements, standard payphones were installed in prison facilities, and inmates were provided access to a live operator. DOC staff indicated that the department's goal at that time was for inmates to use the prison telephone arrangements, referred to as "five minute parole," as a means of maintaining contact with family members.

However, because local telephone companies apparently varied in size and service delivery capabilities, inmate telephone service delivery could differ from prison to prison. For example, DOC staff reported that in some areas of the State, local telephone companies did not want to install telephones in prisons or did not want to install as many telephones as prison facilities requested. Moreover, DOC reported encountering difficulties in getting adequate and timely service for problems with the telephones used by inmates, especially in rural areas. As a result, telephone service delivery lacked consistency and inmate access to telephones was often inadequate.

DOC Had Administrative Role in Early System's Operation. DOC staff had to provide a significant level of administrative and operational assistance for the early inmate phone systems. For example, in the early inmate telephone systems, DOC staff were responsible for escorting inmates to and from payphones, and sometimes DOC staff were responsible for dialing or checking the number of the called party. These telephone-related activities removed prison staff from duties that they normally performed.

Moreover, DOC staff indicated that the department would dedicate significant staff resources to investigate residential and business complaints concerning inmates' abuse of the telephone system. Much of the telephone abuse by inmates was apparently the result of the telephone system lacking security features which could proactively detect or prevent improper telephone use.

Security Features Were Not Available. DOC staff noted that because earlier telephone systems contained no security features, the direct access of inmates to phones opened new avenues for inmates to call and harass individuals. For example, judges, witnesses, and victims were frequent targets of inmate harassment. Additionally, incidents of fraud, such as ordering goods by mail order, were perpetrated by inmates using telephones.

For example, some local telephone companies serving DOC institutions were not always aware of the different methods used by inmates to commit fraud. As a result, DOC staff also reported that an operator would occasionally assist the inmates in committing fraudulent activities. Because these telephone systems lacked automated security devices and automated operators, inmates had increased opportunities to commit illegal activities. Subsequently, recipients of unwanted inmate calls had to contact DOC and request that DOC prevent these calls from occurring.

However, advances in telephone technology during the late 1980s resulted in security features that could more proactively reduce inmate telephone abuse. DOC staff have noted that these features have reduced the incidents of inmate phone fraud that were common in the previous systems. Moreover, as inmate telephone system technology advanced and telephone companies were able to provide "turnkey" telephone systems for clients, correctional systems became an area aggressively marketed by the telephone industry.

Features of the Department of Corrections' Current Inmate Telephone System

In 1990, DOC issued a request for proposal (RFP) for a prison inmate telephone system providing safeguards which would address security concerns raised in previous systems. In addition, DOC wanted a system that provided equal access to telephones and consistency in service to all of the department's facilities statewide (Figure 1). Moreover, during the procurement process, the department clearly indicated that providing these features would be at no cost to the State and not require significant DOC staff involvement. More than 20 companies responded to the RFP, and MCI was awarded the contract in 1991. The current contract expires December 31, 1997.

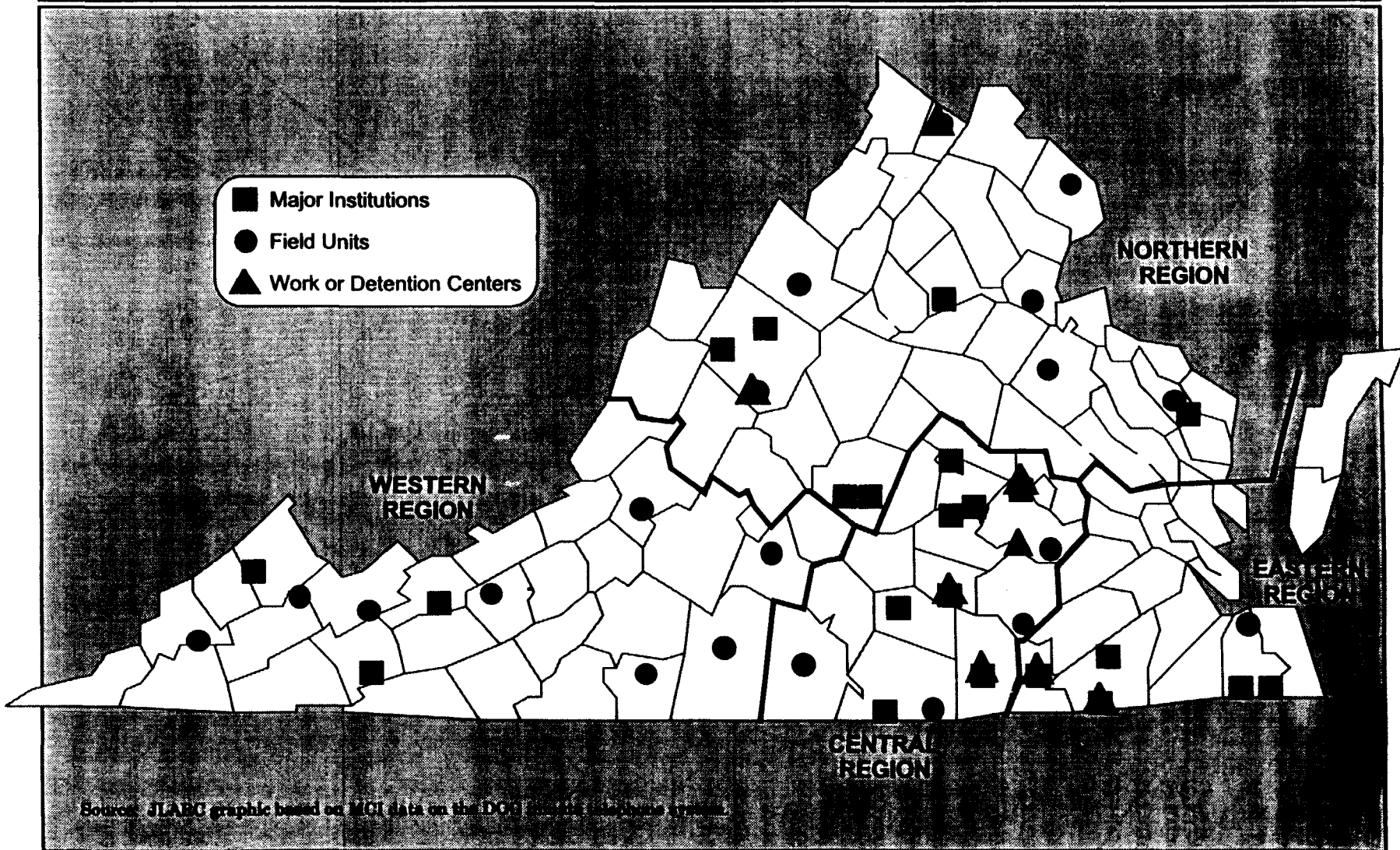
Unlike earlier DOC inmate telephone systems, the current prison inmate telephone system is administered entirely by the contracting telephone company. This arrangement has apparently resulted in fewer administrative responsibilities for DOC, additional security features for public safety, increased telephone availability for prison inmates, and contractor responsiveness to inmate concerns. Finally, the contract requires the payment of commissions to the State based on the system's billable revenues.

Telephone System Operation. As in previous telephone systems serving DOC facilities, the inmate does not pay for collect calls completed. Rather, the call recipient is responsible for call payment. Additionally, the system prevents inmates from receiving incoming calls. Inmates and call recipients are given a 15-minute time limit for each call, but there is no limit on the number of calls that an inmate can complete or the number of calls that an individual can accept.

Presently, inmates have virtually unlimited phone access. Although inmate telephone use policies are left to the discretion of individual facility administrators, in general, the only time inmates do not have access to phones are periods when they are

Figure 1

DOC Facilities with MCI Inmate Telephone Services



confined to their cells or periods when the phones are shut down by facility administrators. Moreover, inmates are generally not restricted to a preapproved list of numbers that can be called. With the exception of numbers blocked from receiving collect calls, inmates are generally allowed to call anyone who will accept the collect call.

Fewer Administrative Responsibilities for DOC with Current System. In contrast to previous inmate telephone systems, DOC has no administrative responsibilities under the current MCI prison inmate telephone contract. The current telephone contract specifies that "no correctional facility personnel will be needed to assist with the placing of a call."

Moreover, the contract establishes that MCI "furnish the equipment, software, maintenance and/or other support services" necessary for the operation of the system. Three phone company staff work at DOC's central office and administer the inmate telephone system. DOC staff indicated that these services are provided at no expense to the department or the State. From an administrative standpoint, the current inmate telephone contract has been beneficial to the department.

Specialized Security Features. In addition to standardizing the prison inmate telephone system statewide, DOC required the system to contain certain features which would counter illegal and harassing inmate telephone activity. DOC staff noted that an inmate telephone system would not exist if it did not possess these security features. Some of the current system's features include:

- a database to block numbers of DOC employees, state officials, certain private residences on request, and 800, 900, and 976 numbers;
- digital recording and monitoring equipment at each major institution;
- a secured personal identification number (PIN) feature to identify each call made by an inmate;
- reporting capabilities on all calls made from Virginia prisons;
- restrictions on all international calls; and
- announcing to the called party the name of the correctional institution from which the call originates (referred to as branding).

In the current inmate telephone system, an inmate is given a PIN which provides him or her with access to the inmate telephone system. The current system's PIN feature and reporting capabilities provide the department with the ability to track inmate telephone calling activity. For example, if an inmate is determined to be engaging in fraudulent or harassing activity, the PIN enables the department to discontinue that inmate's ability to use the telephone. These security features are provided without any administrative support from DOC. Rather, the contracting company carries out these functions.

Moreover, the current inmate telephone system provides call recipients with the capability of having unwanted inmate collect calls blocked. Also, call branding, which announces that the call originates from a DOC prison facility, provides additional safeguards against improper inmate telephone activity. DOC staff indicated that security features, such as those mentioned above, have assisted the department in proactively detecting and reducing improper inmate telephone activity.

Despite these security features, problems with inmates using the phones for fraudulent purposes continue. For example, it is possible that some inmate calls can be transferred to a third party. MCI staff reported cases where inmates will obtain another inmate's PIN and use the phone for fraudulent purposes. Finally, some inmates will reportedly use the phones to encourage visitors to bring contraband into the prison facility.

Inmate Access to Telephones. Prior to the current DOC inmate telephone contract, there was an average of one phone for every 34 inmates. The current inmate telephone contract has increased the number of telephones available to inmates. The most recent data on the number of telephones indicates that MCI currently provides about one phone for every 18 prison inmates statewide.

Although the inmate telephone contract calls for a ratio of one phone for every 15 inmates, MCI staff indicated that this ratio is used as a guideline and that the needs of the prison administrator or design of the facility often dictate the actual number of telephones that can be provided. Nonetheless, inmates still appear to have better access to telephones on a statewide basis than they did in earlier prison telephone systems.

Responsive to Inmate Concerns. DOC required the establishment of an inmate help line and voicemail box that allows inmates to call MCI directly about telephone troubles. When inmates have problems regarding phone service or requests for information pertaining to telephone access, they call the help line and leave a detailed message about the problem. MCI staff generally address these concerns in writing within two working days. This is a feature not offered in earlier inmate telephone systems.

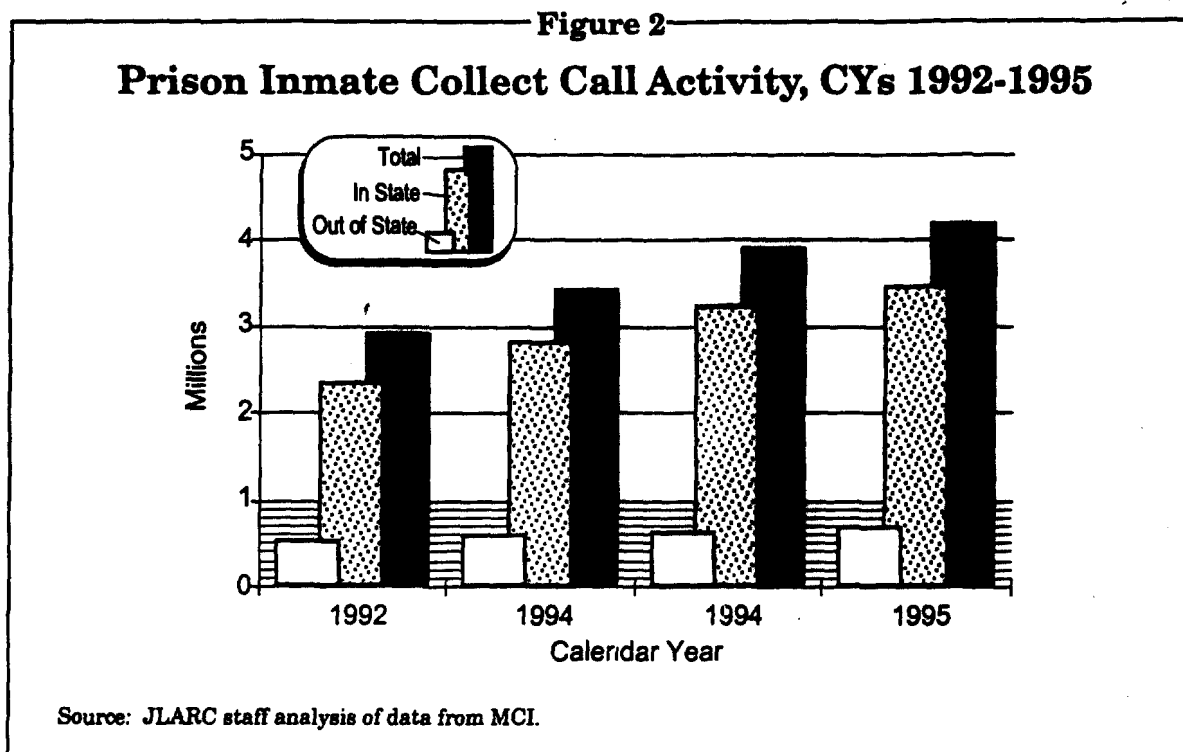
Commission Payments. DOC's current telephone agreement requires MCI to make commission payments to the State. Through June 1995, the commission payments to the State were based on 28 percent of gross billable revenues. Since July 1995, MCI pays the State 50 percent of the gross billable revenues from inmate calls. In previous telephone systems, the State received no commission payments from the companies serving the various DOC facilities.

Call Activity, the Cost of Calls, and Commission Revenue Have Increased

Inmates have completed a significant number of calls since the beginning of the present inmate telephone system contract. The provisions of this contract have also required MCI to provide the State with commission payments based on the system's gross

billable revenues. Finally, since DOC and MCI entered into the contract in 1991, inmate calling activity has increased and revenue generated for the State has increased.

Inmate Calling Activity. Inmate telephone activity data indicate that from the beginning of the inmate telephone contract through July 1996, inmates have completed almost 19 million collect calls. Figure 2 displays the total number and type of calls completed by inmates for each full calendar year of the contract. The total number of calls has increased annually since the current phone contract was established. In FY 1996, the average number of completed calls per DOC inmate was almost 200.



Long Distance Rates. In the current inmate telephone contract, DOC requires that the "cost of calls made must not exceed AT&T rates or local state tariff rates." The cost, or rate structure, applied to an inmate long distance call consists of per minute charges that vary by the time of day the call is placed and distance. In addition, a \$3.00 operator assisted surcharge is added to each call (Table 1).

The operator assisted surcharge is the rate structure that has increased most significantly. In 1994, the operator assisted surcharge was \$1.94 for each call. In January 1995, it was increased to \$3 per call. In contrast, the operator assisted surcharge for an MCI presubscribed payphone is \$2.15 per call.

Phone System Commission Revenue. As discussed earlier in this chapter, the State receives a 50 percent commission on the gross billable charges of the system. From March 1991 through June 1996, the State has generated almost \$24 million in

Table 1

Long Distance Charges for Intrastate Inmate Collect Calls From DOC Institutions

Per Minute Usage Charges

Mileage Band	<i>Business Day</i>		<i>Evening</i>		<i>Night and Weekend</i>	
	First Minute	Additional Minutes	First Minute	Additional Minutes	First Minute	Additional Minutes
1-10	\$0.19	\$0.19	\$0.14	\$0.13	\$0.13	\$0.13
11-22	\$0.22	\$0.22	\$0.15	\$0.14	\$0.14	\$0.14
23-55	\$0.26	\$0.26	\$0.17	\$0.17	\$0.15	\$0.15
56-124	\$0.30	\$0.30	\$0.23	\$0.23	\$0.18	\$0.18
125-292	\$0.32	\$0.32	\$0.25	\$0.25	\$0.19	\$0.19
293+	\$0.32	\$0.32	\$0.25	\$0.25	\$0.19	\$0.19

Note: Each call is assessed a \$3.00 operator surcharge.

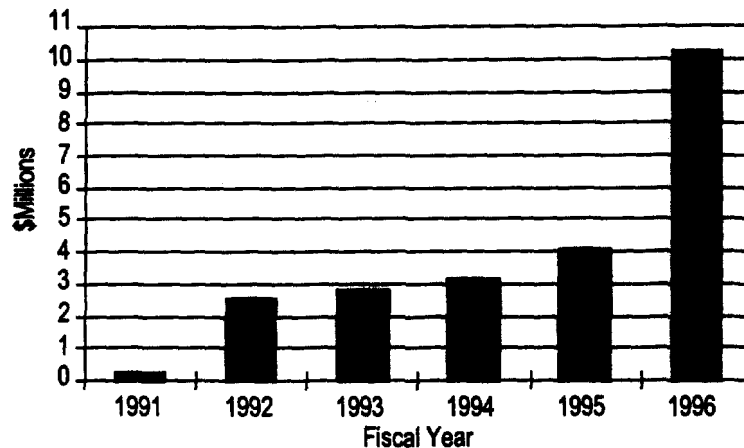
Source: MCI Telecommunications Corporation intercity telecommunications services tariff filed with the Virginia State Corporation Commission, February 1996.

commission revenue from the inmate telephone contract. Figure 3 illustrates that there has also been a steady increase in commission revenue resulting from the prison inmate telephone system.

For example, in FY 1992, the first full fiscal year of the contract, the State received \$2.6 million based on the 28 percent commission rate in place at that time. In FY 1996, when the commission rate was increased to 50 percent, the State received \$10.3 million in commission revenue. MCI has projected that the State will earn \$10.4 million from commissions in FY 1997.

Inmate telephone commission revenue is currently deposited in the State's general fund, and neither statute nor policy directs that these funds be reallocated to DOC or earmarked for any particular prison inmate services. DOC's position is that "the commissions paid to the general fund help offset the costs to the taxpayers for maintaining the prison system." The dramatic increase in commission revenues in FY 1996 led some inmate advocacy groups to question the appropriateness of the charges, which were characterized as an "illegal tax." Such concerns led to this study.

Figure 3

**State Commission Revenue from the
MCI Prison Inmate Telephone Contract, FYs 1991 - 1996**

Note: Revenue for FY 1991 is for the months of March, April, May, and June only.

Source: JLARC staff analysis of Department of Corrections data.

JLARC REVIEW AND REPORT ORGANIZATION

Item 14I of the 1996 Appropriation Act directed JLARC to examine the fees, costs, and revenues related to DOC's prison inmate telephone system. The study mandate required that the study be completed and submitted prior to the 1997 Session of the General Assembly. This section of Chapter I provides an overview of the study issues used to guide the research activities and a brief overview of the report's organization.

Study Issues

JLARC staff developed four primary issues for this study. These issues include a review of:

- the structure and administration of Virginia's prison inmate telephone system,
- the factors that have impacted rates and charges of the system,
- the financial impact on the recipients of prison inmate collect calls, and
- options available for the DOC inmate telephone system that meet the needs of DOC, inmates, and call recipients.

Research Activities

Several research activities were undertaken to address the study issues. These activities included structured interviews, document and file reviews, telephone interviews with selected other states, and observations of the phone system's operation.

Structured Interviews. Structured interviews were conducted with staff from DOC, MCI, the State Corporation Commission (SCC), the Department of Information Technology (DIT), and Virginia Citizens United for Rehabilitation of Errants (CURE). DOC and MCI staff interviews focused on the operation, administration, and costs of the inmate telephone system. Interviews with SCC and DIT staff focused on the regulatory and technical aspect of the system. Also, JLARC staff met with more than ten recipients of inmate collect calls to discuss issues related to the DOC inmate phone system.

Document and File Reviews. Document and file reviews were also conducted by JLARC staff. Documents reviewed included the *Code of Virginia*, the current inmate telephone system contract, related studies on other prison inmate telephone systems, SCC and Federal Communications Commission regulations, inmate telephone policies from other states, and phone bills from recipients of inmate calls. Further, JLARC staff reviewed files related to the inmate telephone system procurement process. JLARC staff used data from these reviews to evaluate the operation and administration of Virginia's inmate telephone system.

Also, JLARC staff reviewed the Virginia State Crime Commission's 1993 report *Improving Family and Community Ties of Incarcerated Persons*. A portion of this report discussed issues related to the DOC inmate phone system. Findings and recommendations from this report were used in order to assess DOC's role in providing oversight and monitoring of the inmate phone contract.

Telephone Interviews with Selected Other States. JLARC staff conducted telephone interviews with correctional staff from 12 southeastern states. In addition, JLARC staff conducted telephone interviews with four additional states that reportedly had noteworthy features related to their telephone systems. The focus of the interviews was to gather information on the operation and administration of inmate telephone systems in other states as well as how commission revenue was utilized. Finally, JLARC staff conducted telephone interviews with staff of selected public utility commissions in other states. Interviews were designed to obtain information on the regulatory activity and authority of these public utility commissions regarding inmate phone systems.

Inmate Phone System Observations. JLARC staff also observed the inmate telephone operation center located in DOC's central office as well as observed inmate telephone systems in a DOC institution. JLARC staff made several collect calls from inmate phones in the facility in order to better understand and observe the operation of the prison inmate telephone system.

Report Organization

This chapter has provided an overview of Virginia's inmate telephone system. Chapter II more closely examines the operation of the DOC inmate telephone system and its financial impact on call recipients. Finally, Chapter III discusses some potential options for the State regarding issues related to the inmate telephone system.

II. Impact of the Inmate Phone System

As discussed in the previous chapter, the current DOC inmate phone system has been in operation since 1991. This system was intended to provide greater uniformity statewide, ensure greater control over fraudulent activities by inmates, and minimize DOC staff's involvement in the administration of this system. Since that time, the system has transmitted almost 19 million collect calls from DOC inmates to recipients both within and outside Virginia. Benefits attributable to these calls have reportedly included the positive effect on the management, adjustment, and rehabilitation of inmates.

The total fiscal impact on the recipients of these calls has been increasing steadily each year. Although the fiscal impact on call recipients has increased to some degree due to factors not related to rates and charges, increases in the surcharge assessed long distance calls has also had a substantial impact on recipients. Moreover, the impact on call recipients varies to some extent by the location of the DOC facility. As a result, the increasing costs associated with using the system could eventually reduce some of the benefits attributed to contact provided through the inmate phone system.

To ensure that the positive benefits of the phone system continue to accrue, steps to reduce the fiscal impact should be taken. Rates and surcharges for the inmate phone system should be capped at rates charged the public for similar calls. Moreover, to lessen the negative impact of the long distance surcharge, DOC should consider increasing the limit on the duration of inmate calls.

FISCAL IMPACT OF THE DEPARTMENT OF CORRECTIONS' INMATE PHONE SYSTEM

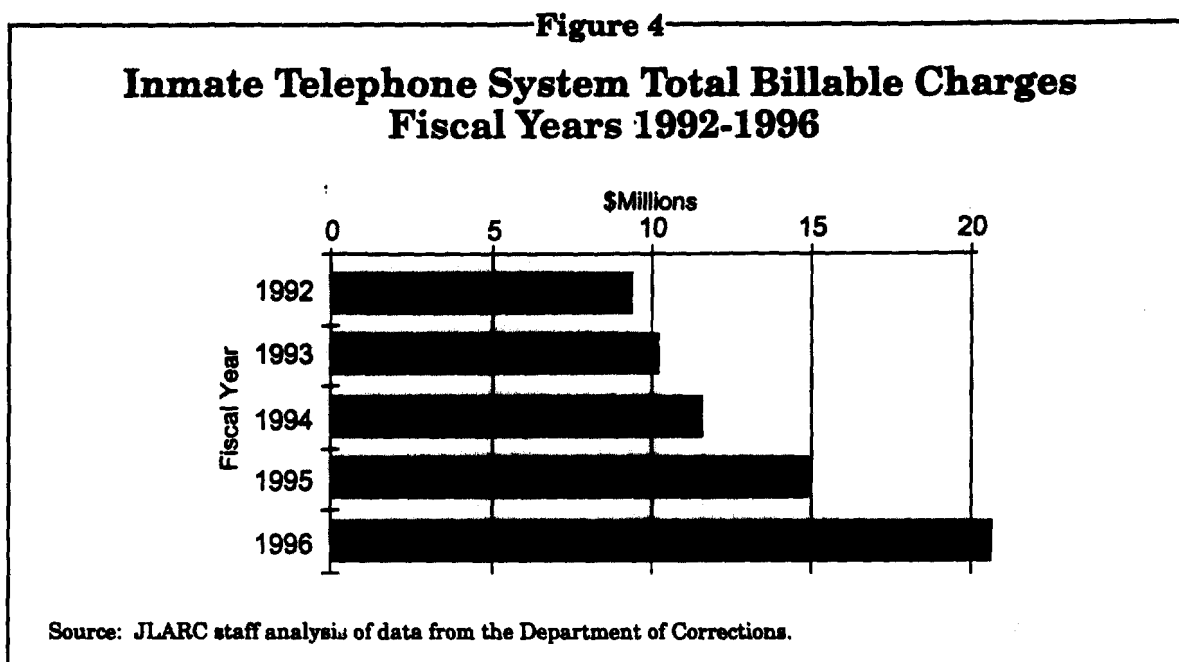
Item 14I of the 1996 Appropriation Act requires that the JLARC review address the financial impact of the DOC inmate phone system on call recipients. This review indicates that the total billable charges to call recipients have increased significantly since FY 1992. A number of factors have contributed to this increase. Inmates are making more calls that last longer and the total inmate population has increased since FY 1992. In addition, increases in the rates charged, primarily the long distance surcharge, have also impacted the total billable charges.

There are a number of potential consequences of the increasing billable charges on both inmates and call recipients. First, call recipients have reported that the increasing costs associated with using the system may require them to reduce the number of calls they can accept from inmates. Because many have reported that positive benefits accrue for the inmate and family through telephone contact, those benefits may be mitigated. Finally, this review determined that DOC facilities located in more remote locations in the State have higher costs per call than facilities located in the central region of the State.

Total Billable Charges from Inmate Phone System Have Increased

As discussed in Chapter I, inmates do not pay for the calls they place through the DOC inmate phone system — the call is placed as a collect call and the call recipient is billed for the call. Therefore, the fiscal impact of receiving calls from individuals in DOC institutions is placed directly, although voluntarily, on the call recipient and not the inmate.

As a result, one measure of the fiscal impact of the inmate phone system is the total charges billed to call recipients. Since FY 1992, the total billable charges from the DOC inmate phone system have steadily increased. From FY 1992 through FY 1996, the total billable charges to call recipients increased from about \$9.5 million to more than \$20 million in FY 1996 (Figure 4).



Also noteworthy is the rate at which the total billable charges to call recipients have increased. From FY 1992 through FY 1996, total charges billed to call recipients have more than doubled. Moreover, from FY 1992 through FY 1994, the annual rate of growth in total charges averaged almost 11 percent. In contrast, for the period from FY 1994 through FY 1996, the total annual charges increased at an average rate of about 33 percent. Clearly, billable charges from the DOC inmate phone system have increased substantially since FY 1994.

A Number of Factors Have Been Responsible for Increases in Billable Charges

One factor that would impact the total charges of a system like the inmate phone system are the rates charged by the telephone carrier. Yet, a number of other factors not

directly related to the rates charged could to some degree result in increases in the total billable charges of the system. Some potential factors include growth in the DOC prison system inmate population, growth in the number of calls placed per inmate, and increases in the length of the calls placed by inmates.

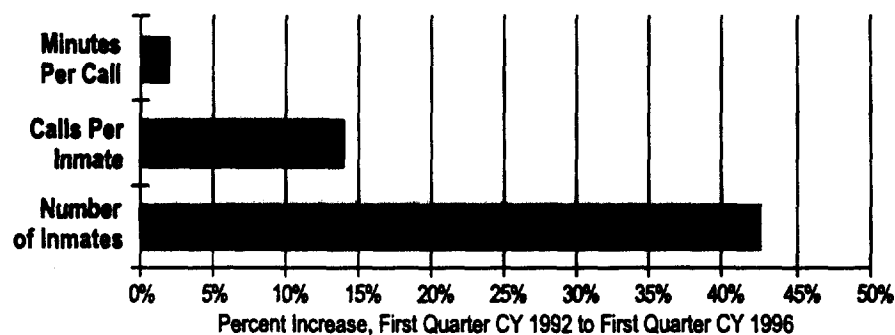
While non-rate factors such as increases in the inmate population and the number of calls made per inmate have had some impact on total charges, increases in the rates charged to call recipients have also had an impact. More specifically, the increase in the service charge or surcharge assessed on every call regardless of length has had a direct impact on the cost of calls. Since December 1994, the surcharge on long distance calls has increased by almost 55 percent.

Non-Rate Factors Have Had An Impact on Total Billable Charges. With a service like the DOC inmate phone system, it is likely that any growth in the number of inmates in the prison system would result in a greater volume of calls. As a result, the total billable charges of the system would likely increase as well. Finally, inmates could be simply placing more calls or talking longer per call, which would likely increase the total charges billed to the call recipients. To determine the potential impact of some of these factors on the total billable costs associated with the DOC inmate phone system, the changes in these factors from the first quarter of calendar year 1992 (January 1992 - March 1992) were compared to the first quarter of calendar year 1996 (January 1996 - March 1996).

As highlighted in Figure 5, the number of minutes per call increased by 2 percent. In addition, the total number of calls made per inmate increased by 14 percent. More significantly, the DOC prison system's inmate population between these two time periods increased by almost 43 percent. The combined effect of increased population, slightly longer calls, and more calls placed per inmate accounts for about 66 percent of the total increase of 120 percent in the phone system's total billable charges. About half of the increase is due to other factors, such as changes in rates and other charges.

Figure 5

Change in Non-Billable Factors that Affect Total Inmate Phone System Charges, 1992 to 1996



Source: JLARC staff analysis of Department of Corrections data.

Exclusive Telephone Provider and Commissions Can Also Impact Costs.

The current DOC phone system is designed so that all inmate calls are carried by the contracting telephone company which is MCI Telecommunications (MCI). One reason for this is to ensure that the security features of the system are not bypassed or compromised. Moreover, it also enables DOC staff to interact with one carrier which reportedly enhances the ease of administration and operation.

On the other hand, neither inmates nor call recipients are able to utilize other carriers of their choice or use recently developed features such as phone cards or specialized calling plans. As a result, the ability to obtain lower rates or use the carrier of choice is non-existent. For example:

The Maine Public Service Commission in a notice of inquiry regarding operator service surcharges noted that individuals using payphones in locations that include correctional institutions often have difficulty in accessing other telephone carriers from these locations: "The end result appears to confirm the market power that exists: under current market conditions, carriers plainly have sufficient market power to increase operator surcharges and sometimes per-minute rates...."

The commissions paid by phone companies to be the exclusive provider of services may also impact the cost of calls paid by users of these systems. For example, in a discussion regarding the provision of operator services from payphones, the Federal Communication Commission noted:

[Operator service providers] generally compete with each other and with the traditional carriers to receive such traffic by offering commissions to payphone or premise owners as the "presubscribed" carrier serving their phones.... While this has proven to be beneficial to the premises owners ... it forces callers to pay exceptionally high rates.

The potential impact of the commission on the cost of calls is important. The current DOC inmate phone system contract requires the telephone contractor to provide the State monthly commission payments based on 50 percent of the gross billable charges. From the remaining 50 percent, the contractor must pay all costs associated with operating the system as well as account for any uncollectable charges. Therefore, the rates and charges will have to be sufficient to ensure that the carrier can pay the required commission as well as return a reasonable profit.

Increases in the Long-Distance Surcharge Have Also Been a Factor in Growth of Total Charges. In addition to the factors discussed earlier in this section, the rates charged to recipients of collect calls from DOC inmates will directly and immediately impact the system's total billable charges. As discussed in Chapter I, the rate structure applied to inmates' long-distance calls from DOC facilities consists of per minute charges and a one time surcharge.